

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

ORIGINAL

77-1085

To be argued by
WILLIAM L. RICHMAN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
PFS

-----x
UNITED STATES OF AMERICA,

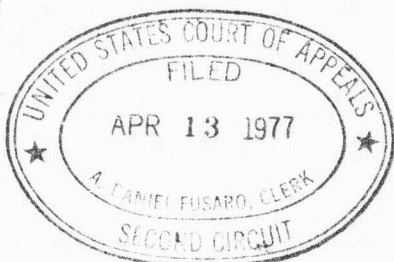
Plaintiff-Appellee,

-against-

JUAN ANTONIO ALVAREZ et al.,
CHARLES COWPERS, a/k/a "Shi,"

Defendants-Appellants.
-----x

BRIEF AND APPENDIX FOR DEFENDANT-
APPELLANT CHARLES COWPERS



WILLIAM L. RICHMAN
Attorney for Defendant-
Appellant Charles Cowpers
Office and P.O. Address
475 Fifth Avenue
New York, New York 10017
(212) 986-1075

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
<u>BRIEF</u>	
Preliminary Statement.....	1
Indictment.....	2
Statement of Facts.....	3
Questions Presented.....	6
<u>Point I</u>	
The evidence as a whole is insufficient to support the verdict.....	7
<u>Point II</u>	
The court committed prejudicial error when in response to the jury's request for testimony regarding the February 1973 transaction, it limited the read- ing to direct testimony.....	12
<u>Point III</u>	
The judgment cannot stand where a patent injustice to a defendant was present.....	13
<u>Point IV</u>	
The sentence of twelve years on each count is unduly harsh and excessive.....	15
Conclusion.....	16

TABLE OF CONTENTS

	<u>Page</u>
<u>APPENDIX</u>	
Docket entries.....	1a
Indictment.....	7a
District Court charge (Joint Appendix)	
Judgment of Conviction (Joint Appendix)	
<u>WITNESSES</u>	
Jack Brown, direct.....	16a
Michael Parker, direct.....	21a
Estelle Tompkins, direct.....	25a
<u>SENTENCE</u>	
Challenge to Information re prior felony.....	32a

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

JUAN ANTONIO ALVAREZ et al.,
CHARLES COWPERS, a/k/a "Shi,"

Defendants-Appellants.

-----x

BRIEF AND APPENDIX FOR DEFENDANT-
APPELLANT CHARLES COWPERS

Preliminary Statement

Defendant, Charles Cowper, appeals from a judgment of conviction rendered after trial before United States District Judge Robert Owen and a jury, convicting him, with others, of conspiracy to violate the narcotics laws of the United States, specifically Sections 173, 174, 812, 841 (a)(1) and 841 (b)(1)(A), 951, 952 and 960 of Title 21, United States Code (Count I) and the substantive Count (28) that he, in February, 1973, "unlawfully, intentionally and knowingly" possessed

with intent to distribute approximately one-eighth kilogram of cocaine (21 U.S.C. Sec. 812); and the sentence of twelve years imposed by the court, to run concurrently.

Timely notice of appeal was filed, and by directive and pursuant to the rules of this Court, William L. Richman was directed to prosecute this appeal as counsel for this defendant-appellant. The defendant is presently incarcerated in a federal facility pending the determination of this appeal.

Indictment

The indictment in substance alleges:

(1) A conspiracy between thirty-two defendants and seventeen co-conspirators (named at the outset of the trial) to violate the narcotics laws of the United States (Count One).

(2) The substantive charge that Charles Cowpers unlawfully and knowingly possessed with intent to distribute one-eighth of cocaine (Count Thirty-Six, re-numbered 28).

Statement of Facts

The indictment charges thirty-two named defendants and many co-conspirators with conspiracy to violate the narcotics laws of the United States and substantive counts setting forth specific violations. Charles Cowpers a/k/a "Shi" was named as one of the conspirators together with the substantive charge of possession with intent to distribute one-eighth kilo of cocaine, in or about February, 1973, in this district.

The government's case in this memorandum is necessarily limited to its relevance to the finding of guilt as to Cowpers.

Jack Brown, possessed of an impressive criminal record, including a lengthy career in the narcotic traffic and a principal in the charges covered by the instant indictment, was the lead off witness in this mammoth trial: a trial that lasted over three months and a record that runs in excess of 9,000 pages. He testified to small transactions with Cowpers from 1966 to 1970, "every three or four days or twice a week" (1210*), and additional small sales from the fall of 1972 to April 1973 (1353-4). That in October or November,

*(refers to trial testimony)

1974, while Brown was in hiding in Miami, Brown phoned Cowpers to visit him in Florida when he gave him (Cowpers) a kilo of cocaine (1355, 2450). Brown surrendered to the authorities in 1974 and negotiated to cooperate in return for leniency. During this period he was constantly interviewed by the agents of the FBI and representatives of law enforcement agencies. He told on his friends and associates including Cowpers whom he described to FBI agent Gaffrey that Cowpers had no business (2443, 11. 6-7), that Cowpers was a street addict, which accounts for the small periodic quantities purchased by Cowpers. The single one kilogram sale surfaced during the trial, the apparent result of the pre-trial preparation since no mention of this sale was made to the grand jury. (2473, 11. 11-17) In fact Brown admitted that he did not tell any government agency that he sold drugs to Cowpers. (2451) He received immunity to cover testimony at trial and to the grand jury. (2484)

Michael Parker, son-in-law of Brown and one of the named defendants, testified to two meetings between Brown and Cowpers (3584, 11. 23-24) and some hearsay conversations such as "Jack (Brown) told me that he spent New Year's with Shi. (3586) Absolutely no testimony with respect to a sale or sales to Cowper or that he viewed

a transfer of drugs or money between them. (4147, 1. 21) In fact when the government offered a picture of Cowpers in evidence, Parker "failed to identify that as someone he knew." (3599, 1. 22 to 3600, 1.6) The government stipulated that Parker was shown a set of photographs on January 17, 1976, including a photo of Cowpers which Parker was unable to identify. (4140, 11. 11-15) Nor did the four-page statement (signed by Parker before Steven Bell) mention the name of Charles Cowpers (4140, 11. 19-22; gx 3515k). The government stipulated that when this witness testified before the grand jury he was not questioned about Cowpers nor was Cowpers mentioned throughout the proceeding. (4503)

Estelle Tompkins, a drug addict and convicted shoplifter for over thirty years (5816-5819) and a known informant for the old Bureau of Narcotics, testified that she purchased an ounce of cocaine from Cowpers in 1968 (5801, 11. 1-6) and other transactions for a year or better. (5801, 11. 17-23) She paid for heroin with stolen clothing at a ratio of three (ticket price on clothing) to one. (5802) Though she was working with Special Agent Gerry, she did not report the alleged transactions with Cowpers to him or to any other official

with whom she co-operated. (5861)

Questions Presented

I

The evidence as a whole is insufficient to support the verdict.

II

The court committed prejudicial error when in response to the jury request for testimony regarding the February 1973 transaction concerning Cowpers, it limited the reading to direct testimony.

III

The judgment cannot stand where a patent injustice to defendant was present.

IV

The sentence of twelve years on each count is unduly harsh and excessive.

Argument

I

The evidence as a whole is insufficient to support the verdict.

Only fourteen of the more than nine thousand pages of testimony given at trial pertain directly to Cowpers. His involvement in the evidence leading to this prosecution is confined to the alleged participation elicited through three government witnesses: Jack Brown, a central figure in the instant matter; Michael Parker, a named defendant who pled guilty to the first count of the indictment; and Estelle Tompkins, not named as either a defendant or co-conspirator.

The indictment specifically charged that Cowpers and others "purchased and resold kilogram quantities of cocaine...and heroin " (Count One [9]). That in furtherance of the conspiracy with one overt act that "in or about February 1973, the defendant, Charles Cowpers, a/k/a 'Shi' received approximately one-eighth kilogram of cocaine in New York...."(29) A substantive count (Thirty-Six) charged that Cowpers in or about February 1973 "unlawfully, intentionally and knowingly did possess with intent to distribute...one-eighth of

cocaine."

The government's evidence in support of the charges consists solely of the testimony by Jack Brown as to sales of small quantities from 1966 to 1970, then from the latter part of 1972 to April 1973, sales consistent with Brown's characterization of Cowpers as a street addict. (2443) To bolster its case and as an afterthought, this witness testified to a single incident in October or November 1974 when "he gave Cowpers a kilo of cocaine." (1355) Nowhere in the indictment or grand jury transcript nor in statements made to law enforcement agencies did this witness mention the one kilo sale. (2451) The fact is that during this period Brown was a fugitive and to avoid detection and arrest, possessed of large quantities of narcotics, he flushed three kilos down the toilet, and that Parker and others brought him small quantities for his personal use. It is, therefore, quite evident that there is no support in this record to a sale in excess of one-eighth of a kilo for personal use. The record is devoid of any evidence to support the charge of possession with intent to distribute. (Count One [9] and Count Thirty-Six)

Parker's testimony did not corroborate his father-in-law in one iota. His statements were pure

hearsay and consisted in the main of conversation between Brown and Parker and that he saw them together but never witnessed a sale, never observed an exchange of narcotics and money, nor did he at any time mention Cowpers to the law enforcement authorities nor in the statement furnished to them. (4140, gx 3515k) Despite his assertion that he saw Brown with Cowpers on several occasions, he was unable to identify Cowpers in photographs submitted to him while on the witness chair. He completely failed to identify the likeness as someone he knew. (3599-3600) He was a completely negative witness.

Estelle Tompkins testified to various bartered transactions in stolen clothing in exchange for narcotics. Though she was a known informer and cooperative of government agencies, at no time did she report the alleged narcotics transactions with Cowpers. (5861)

In substance this is the government's case against Cowpers: insufficient evidence to sustain it without the confusing uncertainties of a multiple defendant trial. "Numbers are vitally important in trial, especially in criminal matters." (Kotteakos v. United States, 328 U.S. 750, 772 [1946]; United States v. Bertolotti -- F.2d --, 2d Circ. 1975). A three-month trial

involving twenty-two named defendants and seventeen co-conspirators cannot dispense justice. The spillover effect; the transference of guilt from defendant to defendant is the only explanation for the finding of guilt with respect to this appellant. A situation that prompted the forelady of the jury to complain to Chief Judge Kaufman and Judge Owen that it was impossible to arrive at her own verdict "due to a multitude of 22 defendants being tried together."

The joinder of a large number of defendants into a mass trial can only result in the deprivation of a fair trial (United States v. Butler, 494 f.2d 1246, 1256, 10th Circ. 1974; Kotteakos, supra). In Kotteakos the Supreme Court Held:

Criminal they may be, but it is not the criminality of mass conspiracy. They do not invite mass trial by their conduct. Nor does our system tolerate it. That way lies the drift toward totalitarian institutions. True, this may be inconvenient for prosecution. But our Government is not one of mere convenience or efficiency. It too has a stake, with every citizen, in his being afforded our historic individual protections, including those surrounding criminal trials. About them we dare not become careless or complacent when that fashion has become rampant over the earth.

This record is completely devoid of any testimony implicating Cowpers in a conspiracy. There is absolutely

no proof that he "unlawfully, intentionally and knowingly" entered into an agreement to violate the law in that he possessed, with intent, to distribute narcotics (United States v. Butler, p. 1249, supra). The proof is consistent only with Brown's characterization that Cowpers was a street addict and purchased or otherwise obtained narcotics for his personal use.

The record is replete with transactions involving Sureda, Alvarez, Rodriguez and Brown, commencing in 1965 on a wholesale level--transactions between Brown and Rodriguez involving stolen property resulting from burglaries and shoplifting--transactions between Brown and Intersimone prior to 1959; clearly separate conspiracies involving large quantities of narcotics and large sums of money. "In view of...the various conspiracies...we believe it unnecessary to engage in a detailed recitation of the inherent prejudice in the evidence presented. The possibilities of spillover effect from testimony on these transactions are patent when the number of conspiracies, the number of defendants and volume of evidence are weighed against the ability of the jury to give each defendant the individual consideration our system requires." (United States v. Bertolotti, supra, Van Graafeiland, C.J.)

This question of law will be further developed in argument advanced by the other appellants in this matter. In view of the position of appellant Cowpers that the record does not support the judgment of conviction, the prejudice resulting from multiple conspiracies and the resultant mass defendant trial will not be further pursued in this brief. He, however, adopts and incorporates by reference the points of the other appellants in support of this appeal.

II

The court committed prejudicial error when in response to the jury's request for testimony regarding the February 1973 transaction, it limited the reading to direct testimony.

The jury, in the course of its deliberations, "request(ed) testimony regarding February, '73, transaction involving Cowpers. (9381, court's exhibit 60) The court sustained the government's position that the reading be confined to the few pages of direct testimony over defense counsel's objection that the testimony elicited on cross examination is vital to the jury's complete understanding of this transaction. (9384)

The specific charge in the indictment centers

around an alleged possession and/or sale of one-eighth kilo of cocaine in February 1973. The bare reading of Brown's recital that a transaction occurred on that date cannot present a clear picture to the jury. The very fact that they requested the reading of this transaction fixing the date is clearly indicative of the fact that they were fully aware of the transaction. The reading of the few sentences without the testimony elicited on cross examination was clearly prejudicial to this appellant.

III

The judgment cannot stand where a patent injustice to a defendant was present.

We cannot question the senectuous rule that jurors will not be heard to impeach their duly rendered verdict and their statements tending toward impeachment are testimonially incompetent. Where, however, events in the juryroom prejudiced the defendant to the extent that he did not receive a fair trial, or was otherwise deprived of the protection afforded him by the constitution, this court may invade the juryroom and consider whether its verdict was violative of fundamental rights

guaranteed by the federal constitution (6th and 14th Amendments, U.S. Constitution; In re Winship, 397 U.S. 358, 368, 1970; United States v. Howard, 506 F.2d 865, 5th Circ. 1975; Parker v. Gladden, 385 U.S. 363, 1966; Owen v. McMann, 435 F.2d 813, C.A. 2, 1970).

The complaint implicit in the letter to Chief Judge Kaufman and Judge Owen by the forelady of the jury is that the mass trial created an impossible situation in the jury deliberations and clearly indicates that she was not in accord with the verdict (Kotteakos v. United States, supra; United States v. Bertolotti, supra). On the basis of this observation, this juror and perhaps others were unable to separate the evidence involving twenty-two defendants and properly evaluate this evidence as it applied to each defendant. It is obvious therefore that the constitutional requirement of due process (Fourteenth Amendment), that prosecutor prove beyond a reasonable doubt every essential element which constitutes the crime charged, was not met (In re Winship, 397 U.S. 358, 363, 1970). Nor can it be said that the constitutional requirement of unanimity in jury verdicts in criminal trials has been met (Sixth Amendment, Johnson v. Louisiana, 406 U.S. 356, 1971; Apodaca v. Oregon, 406 U.S. 404, 1972).

The confusion and spill-over effect in this mass trial completely clogged the conspiracy net, preventing even an occasional minnow to wriggle free (United States v. Tramunti, 513 F.2d 1087 [2d Circ. 1975]).

IV

The sentence of twelve years on each count is unduly harsh and excessive.

The appellant admitted that he was the named defendant in the predicate felon information filed by the government prior to sentence but challenged the conviction on the ground that he was not represented by counsel (Gideon v. Wainright, 372 U.S. 335) except for the Legal Aid appearance at sentence. Counsel noted as part of his challenge (9670-1) that bail of \$300.00, Legal Aid voucher of \$30.00 over a three-year period, did not equate with the five-year sentence in the predicate case and required a hearing and resolution before the imposition of sentence.

In an analagous situation, the Supreme Court* held:

(W)e deal here, not with a sentence

*United States v. Tucker, 404 U.S. 443, 447, 1971.

imposed in the informed discretion of a trial judge, but with a sentence founded at least in part upon misinformation of constitutional magnitude. As in Townsend v. Burke, 334 U.S. 736, 'this prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue.' Id., at 741. The record in the present case makes evident that the sentencing judge gave specific consideration to the respondent's previous convictions before imposing sentence upon him.

And if the predicate felony conviction was sustained, the minimum sentence of ten years is adequate punishment in the instant matter.

Conclusion

For the foregoing reasons, it is respectfully submitted that the judgment of conviction be set aside and the indictment as against Appellant Cowpers be dismissed, and in the alternative the sentence imposed be reduced.

Respectfully submitted,

WILLIAM L. RICHMAN
Attorney for Defendant-
Appellant Cowpers

IV. PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

DATE	DOCUMENT NO.	Interval Action (a)	Start Date End Date (b)	Ex Long (c)	Total Days (d)	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z
4-29-76	Mt. Capera (Atty. William L. Richmond Present) Bail reduction application - Bail changed to \$10,000.00 Cash or Surety..Owen J.																														
5-10-76	Issued Remand.																														
5-11-76	Filed RM in the amt. of \$10,000. Secured by Midland Ins. Co.																														
5-18-76	Filed Mag. Panel Commitment.																														
5-19-76	Filed Dkt. Notice of Motion for an order compelling the prosecution to furnish dft. all statements, etc. fully by credits, to any agency of the Gov't now in the possession etc. & granting dft. an opportunity as indicated, & Bill of Particulars as indicated;																														
5-21-76	Filed Remand																														
6-1-76	All Motions Wn. Today Jun 1st Are Adjourned to Jun 4th @2:00 P.M.																														
6-3-76	Filed transcript of record of proceedings, dated 4-29-76-10:30 AM																														
6-15-76	Filed Gov'ts. Bill of Particulars.																														
6-16-76	Filed Opinion #44578. The Gov'ts Memorandum of law 17 Matters with prepared to accede as to each dft. as indicated. The Gov't concession is made the order of this court & the Gov't is to forthwith comply therewith.....Owen J. (mailed notice)																														
6-18-76	Filed Order that each dft. represented yb counsel who is appointed under Criminal Justice Act is authorized to retain investigation services & expend up to the statutory limit of \$300.00 & dfts. may at their option retain the named investigator & apply their authorized moneys severally to his fee as allowed by this Court...Owen J.(mailed notice)																														
6-30-76	Filed order that all voir dire Questions are to be submitted by 7-14-76 OWEN.J. m/n/.																														
6-29-76	Filed Opinion #44673. Deft's John Capra, Steven Dellacava and Leoluca Guarino, are collectively sever for a later trial. Beyond the foregoing, all motions to sever are denied.OWEN.J.m/n.																														
6-21-76	Suppression Held.....Owen J.																														
7-7-76	Filed Memorandum & order. It is ordered in the interests of justice, that the trial of this action is adjourned from 7-19-76 to 8/10/76, to begin at 10:00 a.m. in Courtroom 318Owen J. (mailed notice)																														
7-9-76	Filed Memorandum Order Trial has been adjourned to 8-10-76, proposed voir dire due 8-3-76 directly to Chambers...Owen J.																														

(CONT'D)

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

3 a
101,70

Charles Cowpers, etc.

Page 43

DATE

PROCEEDINGS ...

8-15-76 Filed Opinion #44760. All motions of dfts. as moved for discovery & inspection & of particulars, are denied... Certain dfts. moved for psychiatric information as indicated... The foregoing is so ordered.... Owen J. (mailed notice)

8-20-76 Filed Opinion #44761. All motions seeking disclosure of Gov't documents are denied. dfts. motions to disclose identity of cooperating dfts. denied. Various dfts. move to dismiss indictment on grounds of jurisdictional delay, motions denied. Motions seeking order enjoining Gov't from cross-examining them about past record, as moving seeking this issue, hearing will be held on 7/21/76 in room 318. All other motions denied as indicated..... Owen J. (mailed notice)

8-20-76 Filed Opinion #44769. Court order to deliver in camera inspection as indicated. Owen J. (mailed notice)

8-10-76 Filed Information of Prior Felony Conviction on 1-29-70/

8-9-76 All Counsel present for P.T.C.

8-10-76 Trial Begun - Interpreters Gustavo Hoffmann & Anita Zavellos sworn. Jury Selection begun.

8-11-76 Jury Selection Cont'd.

8-12-76 Jury Selection Cont'd Surpression Cont'd & Concludad.

8-18-76 Trial Cont'd - Openings Cont'd

8-19-76 Trial Cont'd

8-20-76 Trial Cont'd

8-23-76 Trial Cont'd

8-24-76 Trial Cont'd

8-25-76 Trial Cont'd

8-26-76 Trial Cont'd

8-27-76 Trial Cont'd

8-30-76 Trial Cont'd

8-31-76 Trial Cont'd

9-1-76 Trial Cont'd

9-2-76 Trial Cont'd

9-3-76 Trial Cont'd

9-7-76 Trial Cont'd - Hearing held concerning authority of Tapes 3-03-05 of concerning dft. intersome court finding: Tapes are Original Unaltered Ver. n.... Owen J.

9-8-76 Trial Cont'd

9-9-76 Trial Cont'd

9-10-76 Trial Cont'd

9-13-76 Trial Cont'd

9-14-76 Filed Order that each counsel who is appointed under the Criminal Justice Act, is authorized to file an interim voucher for services rendered under the Criminal Justice Act from the date of their appointment up to & including 9/10/76, the actual trial having commenced on 8/10/76 & continuing & the assigned counsel may file a final voucher subsequent to the termination of trial as to their respective dfts. subject to the ultimate allowance of this court.... Owen J. (rm)

DATE	PROCEEDINGS
9-14-76	Trial Adj. to 9-15-76
9-15-76	Trial Cont'd
9-16-76	Trial Cont'd
9-17-76	Trial Cont'd
9-20-76	Trial Cont'd Jurer #10 is excused & replaced by Alt. #1.
9-21-76	Trial Cont'd
9-22-76	Trial Cont'd
9-23-76	Filed True Copy of USCA Mandate, District Court Order is Affirmed. Judgment Dtd. 9-24-76 Clerk, Eng. 10-1-76. (m)
10-8-76	Filed Gov'ts Application for an order of Immunity as to Peter J. Fiumara, witness.
10-8-76	Filed Order that Peter J. Fiumara give testimony & that any testimony, etc. shall be subject to Immunity provisions as indicated. This Order shall not take effect until Peter J. Fiumara refuses to testify as indicated, ...Owen J. (m)
9-23-76	Trial Cont'd
9-24-76	Trial Cont'd
9-27-76	Trial Cont'd
9-28-76	Trial Cont'd
9-29-76	Trial Cont'd
9-30-76	Trial Cont'd
10-1-76	Trial Cont'd
10-4-76	Trial Adj.
10-5-76	Trial Cont'd
10-6-76	Trial Cont'd
10-7-76	Trial Cont'd
10-8-76	Trial Cont'd
10-12-76	Trial Cont'd - Gov't Rests - Motions
10-13-76	Trial Cont'd - Motions Cont'd
10-14-76	Trial Cont'd
10-15-76	Trial Cont'd
10-18-76	" "
10-19-76	" "
10-20-76	Trial Adj. to 10-21-76
10-21-76	Trial Cont'd - Govt. Summations begun.....Owen J.
10-22-76	Summation Cont'd
10-25-76	" "
10-26-76	" "
10-27-76	" "
10-28-76	" "
10-29-76	" "
11-1-76	" "
11-2-76	" "
11-3-76	" & concluded Govt Rebuttal Begun.
11-4-76	Govt. Rebuttal Cont'd
11-9-76	Filed CJA 20 Copy 2 - Approving payment to William Richman, 475 Fifth Ave., NYC 10017 as dfts. counsel...dtd. 9-27-76.....Owen J.
11-12-76	Filed One Sealed Envelope - Dtd. 10-6-76- Ordered Sealed by the Court on this date.....Owen J.
11-12-76	Filed One Sealed Envelope - dtd. 8-30-76. Ordered Sealed by the Court on this date.....Owen J.

(Cont'd)

Cr. 324

Charles Cowpover

DATE	PROCEEDINGS
11-12-76	Filed One Sealed Envelope - dtd. 11-4-76. Notes from Deliberating Jury. Ordered Sealed by the Court on this date. Owen J.
11-12-76	Filed One Sealed Envelope - dtd. 8-13-76. Questions subm. to Court by counsel in jury selection. Ordered Sealed by the Court. Owen J.
11-12-76	Filed One Envelope Sealed. Dtd. 11-25-76. Ordered Sealed by the Court 10-6-76. Owen J.
11-12-76	P.S.T. Ordered for each dft. - Verdict - Sentencing date for all dfts. - Jan. 10, 1977 from 10:00 A.M. on - Dft. - Cr. 1 Guilty, Cr. 25 Guilty, Bail \$10,000 Remanded. Owen J.
11-5-76	Trial Con'd - Charge to Jury.
11-6-76	Charge Cont'd & Deliberating Begun
11-7-76	Deliberating Cont'd
11-8-76	" "
11-9-76	" "
11-10-76	" "
11-11-76	" "
11-12-76	" " & Concluded.
11-17-76	Filed Redacted Indictment.
11-17-76	Filed transcript of record of proceedings, dated Jun 1, 21, 24, 25, 26, 27, 28, 29, 30, 31, 1976
11-17-76	Filed transcript of record of proceedings, dated Aug 10, 11, 12, 13, 1976
11-17-76	Filed transcript of record of proceedings, dated Aug 12, 20, 23, 24, 1976
11-17-76	Filed transcript of record of proceedings, dated Aug 25, 26, 27, 30, 1976
11-17-76	Filed transcript of record of proceedings, dated Aug 31, 1976
11-17-76	Filed transcript of record of proceedings, dated Sep 1, 2, 3, 7, 8, 1976
11-17-76	Filed transcript of record of proceedings, dated Sep 9, 10, 13, 14, 15, 1976
11-17-76	Filed transcript of record of proceedings, dated Sep 16, 17, 20, 21, 22, 1976
11-17-76	Filed transcript of record of proceedings, dated Sep 23, 24, 27, 28, 29, 1976
11-17-76	Filed transcript of record of proceedings, dated Sep 30, 1976
11-17-76	Filed transcript of record of proceedings, dated Oct 1, 5, 6, 7, 8, 12, 1976
11-17-76	Filed transcript of record of proceedings, dated Oct 19, 21, 22, 25, 26, 1976
11-17-76	Filed transcript of record of proceedings, dated Oct 27, 28, 29, 1976
11-17-76	Filed transcript of record of proceedings, dated Nov. 1, 2, 3, 4, 1976
12-23-76	Filed transcript of record of proceedings, dated 11-5, 6, 7, 8, 9, 10, 11, 12, 1976
1-24-77	Filed Dfts. Notice of Appeal from Judgment dtd. 1-24-77. (mailed notice)
1-21-77	Filed Judgment & Commitment (Atty. William L. Richman Present) The Dft. is hereby committed to the custody of the atty. gen. or his authorized representative for imprisonment for a period of TWELVE (12) YEARS on Each of Counts 1 & 36 to run concurrently to each other. Pur. to T. 21 Sec. 841, U.S. Code. the Dft. is placed on Special Parole for a term of THREE (3) YEARS on Each of Counts 1 & 36 to run concurrently to each other & to commence upon the expiration of his confinement.... Owen J. Issued Commitment 1-31-77.
2-2-77	Filed True Copy of J&C with marshals ret. Delivered to Warden, MCC, NY on 1-21-77.

6 a

SAMPLE

PROCEEDINGS

DATE

2-22-77 Filed Memo. End. on Motion filed 2-22-77. Bail pending appeal from judgment & sentence. Ret. Sine Die. Motion Denied. wit' out prejudice. See minutes of February 17, 1977..... Owen J.

2-22-77 Filed Dfts. Notice of Motion - Re: Bail pending appeal from judgment & sentence. Ret. Sine Die.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

4/5/66
J. J. [unclear]
[unclear]

UNITED STATES OF AMERICA

Judge [unclear]

INDORMENT

2903

76 C. 374

- A 16 JOHN ANTONIO ALVARO, a/k/a "Tony"
A 16 GABRIEL RODRIGUEZ, a/k/a "Angelo"
X A 16 JOSE LUIS SUREDA, a/k/a "Luis"
A 16 NICHOLAS MONTI, a/k/a "Uncle"
A 16 STEPHEN WILKINSON, a/k/a
"Tony," a/k/a "Mr. B."
A 16 NICHOLAS CARRA, a/k/a "Johnny Roche,"
A 16 SLOTTA GUARINO,
A 16 STEPHEN D. BLICAWI, a/k/a "Deenole,"
A 16 WILLIAM RICHMOND,
A 16 JAMES R. HIGHER, a/k/a "Chinch,"
A 16 JOSEPH FALCON, a/k/a "Footnote,"
A 16 LOIS CARSON,
A 16 ANN RYAN, a/k/a "Lois's
Sister,"
MICHAEL PARKER,
A 16 YOUNG ALANNE SCHENKLE,
AL WILLIAMS, a/k/a "Big Al from
Chicago,"
A 16 DONALD O'BROCK,
A 16 BOB WILSON, a/k/a "Don from South
Carolina,"
3 A 16 JAMES LAY, a/k/a "Take the Robs,"
A 16 TONY DAVIS, a/k/a "Tony,"
A 16 EDWARD BRIGHAM, a/k/a "Rebe," D : OPEN
A 16 JOE MONTI, a/k/a "Papers,"
A 16 LAMARCE MITCHELL, a/k/a "L.J.,"
A 16 SOLON CLARK, a/k/a "Solo,"
A 16 RAPHAEL BOKHE, a/k/a "Spanish
Michael," a/k/a "Little Michael,"
A 16 [unclear] a/k/a "Shi,"
A 16 [unclear] a/k/a "Shi's
Woman," a/k/a "Toni,"
A 16 GALENT LEE JONES, a/k/a "Al from
Norfolk,"
A 16 GIBBY KILLEN, a/k/a "Pam,"
X A 16 JOHN P. MORGAN, a/k/a "J.P.,"
A 16 NELSON ALVAREZ, a/k/a "Tony's
Brother,"
A 16 EDUARDO YAUJAR, a/k/a "Angelo's
Uncle,"
A 16 LAMAR YAUJAR, a/k/a "Angelo's
Cousin,"

Prison 8
Prison 12
Capra 7
Wash. D.C. 6

Defendants.

COURT ORDER

The Grand Jury charges:

1. From on or about January 1, 1968, and continu-
ously thereafter up to and including the date of the filing

Count 1- [unclear]
Count 3- [unclear]

OVERT ACT 27 - 1/5th [unclear] 4 or
COUNT 36 - 1/5th [unclear] 4 or

4/5/76
of this indictment, in the Southern District of New York,
and elsewhere,

- ✓ JUAN ANTONIO ALVAREZ, a/k/a "Tony,"
- ✓ ANGELO RODRIGUEZ, a/k/a "Angelo,"
- ✓ JOSE LOUIS SANCHEZ, a/k/a "Luis,"
- ✓ FRANK POTER, a/k/a "Uncle,"
- ✓ SEBASTIAN HENRIKSSON, a/k/a
"Benny," a/k/a "Mr. B,"
- ✓ JOHN CAPRA, a/k/a "Johnny Hooks,"
- ✓ THOMAS GUARINO,
- ✓ STEVEN DELLACINA, a/k/a "Beatsie,"
- ✓ WILLIAM HICKLING,
- ✓ SIDNEY FOSTER, a/k/a "Chin,"
- ✓ JOSEPH SAMPSON, a/k/a "Beatsie,"
- ✓ LOIS SAMPSON,
- ✓ ANN REYNOLDS, a/k/a "Lois's
Sister,"
- ✓ MICHAEL PARKER,
- ✓ YVONNE ALVAREZ SCHENNAULT,
- ✓ AL WILLIAMS, a/k/a "Big Al from
Chicago,"
- ✓ DONALD O'DOOD,
- ✓ DON WILSON, a/k/a "Don from South
Carolina,"
- ✓ JAMES LAWS, a/k/a "Tobe the Robe,"
- ✓ TOMMY DAVIS, a/k/a "Pipety,"
- ✓ BERNARD BRICHMAN, a/k/a "Nabe,"
- ✓ JOHN MORRIS, a/k/a "Papato,"
- ✓ LAWRENCE MITCHELL, a/k/a "L.J.,"
- ✓ SOLO GLAZE, a/k/a "Solo,"
- ✓ RAFAEL BONILLA, a/k/a "Spanish
Michael," a/k/a "Little Michael,"
- ✓ CHARLES COMERS, a/k/a "Shi,"
- ✓ MARION DUMORE, a/k/a "Shi's
Woman," a/k/a "Toni,"
- ✓ ALBERT LEE JONES, a/k/a "Al from
Norfolk,"
- ✓ HELEN KELLEN, a/k/a "Pam,"
- ✓ JOHN F. MORGAN, a/k/a "J.P.,"
- ✓ NILSON ALVAREZ, a/k/a "Tony's
Brother,"
- ✓ EDUARDO YAUJAR, a/k/a "Angelo's
Uncle,"
- ✓ LAZARO YAUJAR, a/k/a "Angelo's
Cousin,"

the defendants, and others to the Grand Jury known and
unknown, unlawfully, wilfully and knowingly, combined,
conspired, confederated and agreed together and with each
other, to violate the narcotics laws of the United States,
specifically, Sections 173, 174, 175, 841(a)(1) and
841(b)(1)(A), 951, 952 and 960 of Title 21, United States
Code.

THE OBJECTS OF THE CONSPIRACY

2. It was part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully and knowingly would import and bring into the United States large amounts of narcotic drugs, specifically heroin and cocaine, from and through countries unknown in South America and other places, in violation of Sections 173, 174, 951, 952 and 960 of Title 21, United States Code.

3. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators, unlawfully, wilfully and knowingly would receive, conceal, keep, sell and facilitate the transportation, concealment and sale of narcotic drugs, specifically heroin and cocaine, after these narcotic drugs had been imported and brought into the United States contrary to law, knowing that these narcotic drugs had been imported and brought into the United States contrary to law in violation of Sections 173 and 174 of Title 21, United States Code.

4. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully wilfully, intentionally and knowingly, would distribute and possess with intent to distribute heroin and cocaine, which are classified under law as Schedule I and II narcotic drug controlled substances, in violation of Sections 312, 841(a)(1), and 841(b)(1)(A) of Title 21, United States Code.

THE MEANS USED BY THE DEFENDANTS AND
CO-CONSPIRATORS TO ACCOMPLISH THE
OBJECTS OF THE CONSPIRACY

5. Among the means whereby the defendants and co-conspirators would and did carry out the objects of said conspiracy, and insure the success of the unlawful venture to import, buy, sell and distribute narcotic drugs for profit, were the following:

1st
2nd
3rd
level

(a) The conspiracy took the form of a loose-knit business organization with members of the conspiracy operating at three basic levels. At the first level, some of the defendants and co-conspirators served as importers and sources of supply of narcotic drugs. At the second level, other members of the conspiracy acted as middlemen, purchasing narcotic drugs, in wholesale quantities directly from the suppliers. In turn, these middlemen sold heroin and cocaine in multi-kilogram quantities to defendants and co-conspirators at the third level who, in turn, distributed these drugs to their respective customers. Certain of the other defendants and co-conspirators performed specialized functions which were essential to the success of the overall conspiracy. In this fashion, a chain of distribution was established for this narcotics-trafficking business leading from sources of heroin and cocaine through middlemen, wholesalers and retailers and ultimately to narcotic addicts and users in New York City, Washington, D.C., Chicago, Illinois, Miami, Florida, and other cities in the United States.

3rd level

(b) During the course of the said conspiracy the said defendants played the following roles in this conspiracy:

Importers and Sources of Supply

(1) Defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SUREDA, a/k/a "Luis," were importers and suppliers of cocaine, doing business in New York City and Miami, Florida, who between 1963 and 1974 sold approximately 70 kilograms of cocaine each year.

(2) Defendant SEBASTIAN INTERSIMONE, a/k/a "Tony," a/k/a "Mr. B," was a supplier of heroin, doing business in New York City.

11 a

(3) Defendants JOHN CAPEA, a/k/a "Johnny Books," LUCIANA CHARINO and STEVEN DELLACANA, a/k/a "Esansie," were suppliers of heroin, doing business in New York City, who between 1970 and 1973 sold kilogram quantities of heroin each month.

Wholesale Middlemen

Get

(4) John Brown, a/k/a "Jack," named herein as a co-conspirator, but not as a defendant, was a bulk purchaser of heroin and cocaine from the importers and sources of supply.

(5) Defendant FRANK MOTER, a/k/a "Uncle," was an advisor to John Brown, a/k/a "Jack," delivered narcotic drugs to Brown and received drugs from him, introduced certain defendants and co-conspirators to Brown for the purpose of purchasing drugs, vouched for them as reliable persons, financed the narcotic operations of several of the defendants and co-conspirators, engaged in financial dealings for Brown and other of the defendants and co-conspirators, and shared in the profits of the conspiracy.

100%
Charges
to
Brown

(6) Defendant MICHAEL PARKER delivered narcotic drugs on several occasions to several of the defendants and co-conspirators.

Son-in-law
of John Brown

Wholesale Traffickers

(7) Defendants WILLIAM NIGHTOWER, SIDNEY POSTER, a/k/a "Chinch," JOSEPH SAMPSON, a/k/a "Boothnose," and LOIS SAMPSON, purchased and resold kilogram quantities of heroin and cocaine while doing business in Washington, D.C. and New York City.

(8) Defendants YVONNE ALVAREZ SCHENKMAN, AL WILLIAMS, a/k/a "Big Al from Chicago," and DONALD O'DOOD purchased and resold kilogram quantities of heroin and cocaine while doing business in Chicago, Illinois, Miami, Florida and New York City.

(9) Defendants DON WILSON, a/k/a "Don from South Carolina," JAMES LAMB, a/k/a "Take the Robo," TOMMY DAVIS, a/k/a "Dapty," EDWARD BRIGGS, a/k/a "Take," JOHN MORRIS, a/k/a "Paper," LAWRENCE MITCHELL, a/k/a "L.J.," SOLOH CLARK, a/k/a "Solo," RICHARD BONILLA, a/k/a "Spanish Michael," a/k/a "Little Michael," CHARLES GONZALEZ, a/k/a "Shit," MARION BUNNORE, a/k/a "Shit's Woman," a/k/a "Toad," ALBERT LEE JONES, a/k/a "Al from Norfolk," KATHY KELLEY, a/k/a "Pet", ANN REYNOLDS, a/k/a "Lois's Sister," and JOHN P. MORGAN, a/k/a "J.P.," purchased and resold kilogram quantities of cocaine and, with respect to certain of the defendants and co-conspirators, heroin while doing business in New York City and, in certain cases, in various cities in New Jersey.

Other Defendants

(10) Defendants NELSON ALVAREZ, a/k/a "Tony's Brother," built secret compartments in various locations in Florida where he and his brother, defendant JUAN ANTONIO ALVAREZ, a/k/a "Tony," hid large amounts of cocaine and money related to narcotics transactions.

(11) Defendants NELSON ALVAREZ, a/k/a "Tony's Brother," EDUARDO YAUJAR, a/k/a "Angelo's Uncle," and LAZARO YAUJAR, a/k/a "Angelo's Cousin," picked up money as payment for narcotics and delivered it to defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," and ANGEL RODRIGUEZ, a/k/a "Angelo."

(12) Other co-conspirators, not named herein as defendants, served respectively during the course of the said conspiracy as suppliers of narcotic drugs and as purchasers and resellers of narcotic drugs, in various cities in the United States.

24. In and about December, 1972, the defendant ANA FENOLDS, a/k/a "Ana's Sister," sold approximately one kilogram of cocaine in Orangeburg, New York.

No Date
168 Cooper St.
Orangeburg N.Y.

25. In and about January, 1973, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SURINA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York, New York.

No Date
168 Cooper St.
Orangeburg N.Y.
42nd St. N.Y.C.

26. In and about January, 1973, the defendant BERNARD BRICHMAN, a/k/a "Habe," received a quantity of cocaine in Orangeburg, New York.

No Date
168 Cooper St.

27. In and about 1973, the defendant LOIS SAMTSON delivered approximately three-eighths kilogram of cocaine to the defendant WILLIAM HECHTOWER in Washington, D.C.

No Date
168 Cooper St.
Washington D.C.
Silver Spring, Md.

28. In and about February, 1973, the defendant LAWRENCE J. MITCHELL, a/k/a "L.J.," received approximately one kilogram of cocaine in New York, New York.

No Date
168 Cooper St.
Orangeburg N.Y.

29. In and about February, 1973, the defendant CHARLES CONNERS, a/k/a "Shi," received approximately one-eighth kilogram of cocaine in New York, New York.

No Date
168 Cooper St.
Orangeburg N.Y.

30. On or about April 13, 1973, the defendant STEVEN DELIACAVA, a/k/a "Beanie," agreed to deliver one kilogram of heroin in New York, New York.

No Date
168 Cooper St.
Orangeburg N.Y.

31. On or about April 13, 1973 the defendant STEVEN DELIACAVA, a/k/a "Beanie," had in his possession approximately \$14,000. (corrected to \$20,000) in 3/p.

No Date
168 Cooper St.
Orangeburg N.Y.

32. In and about April, 1973, the defendants FRANK MONET, a/k/a "Uncle," and BERNARD BRICHMAN, a/k/a "Habe," received approximately one-half kilogram of cocaine at 135 West 96th Street, New York, New York.

No Date
168 Cooper St.
Orangeburg N.Y.

33. In and about the summer of 1973, the defendants JUAN ANTONIO ALVAREZ, a/k/a "Tony," ANGEL RODRIGUEZ, a/k/a "Angelo," and JOSE LUIS SURINA, a/k/a "Luis," sold approximately 15 kilograms of cocaine in New York City.

No Date
168 Cooper St.
Orangeburg N.Y.

controlled substance, to wit, approximately one-half kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-THREE

The Grand Jury further charges:

71 In and about February, 1973, in the Southern District of New York, LAMAR J. HITCHCOCK, a/k/a "L.J." the defendant, unlawfully intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-half gram of cocaine.

A-28
B/P

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-FOUR

The Grand Jury further charges:

11/2 In and about the Fall of 1971, in the Southern District of New York, MANION FURIONE, a/k/a "Eoni," a/k/a "Chi's Woman," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

11/2
11/2
11/2

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

COUNT THIRTY-FIVE

The Grand Jury further charges:

28 11/2 In and about February, 1973, in the Southern District of New York, CHARLES CONNORS, a/k/a "Chi," the defendant, unlawfully, intentionally and knowingly did possess with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one-eighth kilogram of cocaine.

4 oz
1-21
B/P

2010 11/2
(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

PROPOSED LISTING OF THE TABLE OF CONTENTS FOR JOINT APPENDIX

1. Docket Sheets
2. Indictments
3. Opinions of the District Court:

Opinion #44578, dated 6/16/76, re: govt. concession made order of the court

Opinion #44673, dated 6/29/76, re: severance of Capra, Dellacava, Guarino

Opinion #44760, dated 7/15/76, re: discover and b/p motions denied

Opinion #44768, dated 7/16/76, re: disclosure of govt. witnesses denied, dismissal denied, hearing on cross-examination as to past record granted, other motions denied

Opinion #44769, dated 7/20/76, re: in-camera inspection

4. District Court Charge
5. Judgement of Convictions

1 min 6 Brown-direct

2 A He is the gentleman sitting on the front row,
3 with the white shirt on, with the white sweater.

4 Q Where with respect to anybody else is he sitting?

5 A Behind the counselors, in the front row.

6 Q Where in the front row?

7 A The first person on the front row on the right.

8 ER. BELLER: Would the record reflect the
9 witness has identified the defendant Charles Cowper?

10 THE COURT: It may.

11 Q I believe you testified you began selling drugs
12 through Shi in 1966?

13 A That is correct.

14 Q Through what period of time did you sell drugs
15 to Shi?

16 A From 1966 until 1970. Shi left New York and came
17 back in 1972, the latter part, and we began to do business
18 again from 19 -- the latter part of '72 up until, I would
19 say, in April of 1973, and on one occasion when I was on
20 the run, in Miami, Florida, and one occasion in 1974.

21 Q What kind of drugs did the defendant Cowper
22 purchase from you in the period 1967 to 1970 and thereafter,
23 1972 to 1974?

24 A From '66 to '67, he purchased mostly heroin. I
25 don't recall him buying cocaine. From 1972 to 1973 he

1 rmh 7 Brown-direct

2 bought cocaine.

3 Q With what frequency did he purchase drugs from you?

4 A In 1972 to '73 I would say on a daily basis,
5 meaning every three to four days, or twice a week, and then
6 there came a time --

7 Q That is a little confusing. You said a daily
8 basis, two or three times a week. Would you explain that?
9 What does that mean?

10 A Well, when we first started back I would only
11 see him, from the inception, as to when we started, twice
12 or three times a week. Then as the weeks grew on, I saw him
13 on the basis of every day or every other day because his
14 business had picked up.

15 ✓ Q Where did Shi live, do you know?

16 A He lived in the Bronx, but I don't know the
17 address.

18 Q I believe you previously identified a woman you
19 knew as Toni, is that correct?

20 A In this courtroom?

21 Q Yes, sir.

22 A Yes, I did.

23 Q Will you point her out again, please?

24 A She is the person sitting next to Shi. --

25 Q When did you meet Toni?

2 A I met Toni some time in 1970.

3 Q How did you meet her?

4 A I met her as a result of her being Shi's wife,
5 but I don't recall after Shi left New York -- I don't recall
6 as to how we became acquainted with each other.

7 Q Did you know her before Shi left New York?

8 A Not really.

9 Q Had you met her or seen her before Shi left New York?

10 A Yes, I did.

11 Q When did Shi leave New York?

12 A In 1970.

13 Q Did there come a time when Toni began to purchase
14 drugs from you?

15 A Yes.

16 MS. SOLLEDER: Object to the leading tenor of
17 the question, your Honor. What happened when he met her?

18 THE COURT: No, overruled. Go ahead.

19 Q When was that?

20 A During the year 1970, I would say the spring.

21 Q What kind of drugs did Toni purchase from you?

22 THE COURT: Let's just ask what happened, Mr. Beller,
23 all right?

24 MS. SOLLEDER: Thank you, your Honor. --

25 MR. BELLER: Well, your Honor, I am not particularly

Ex A

1 John 9 Brown-direct
2 interested in each transaction but if defense counsel want
3 to go into it, they can.

4 MS. SOLLEDER: I object to that statement.

5 THE COURT: There is an objection to the leading
6 question and I will sustain that.

7 Q Will you tell us what happened --

8 MS. SOLLEDER: May we have a date?

9 Q -- when you first began to sell drugs to the
10 defendant Marion Dunmore, or " " ?

11 A I cannot give you a date. I can only give you
12 the month.

13 THE COURT: Go ahead.

14 Q When was that?

15 A In April of 1970.

16 Q For what period of time did you sell drugs to Toni?

17 A From 1970 -- not only a daily basis, but from 1970
18 up until 1972, and that only occurred maybe once or twice
19 a year.

20 Q Now what kind of drugs did you sell her?

21 A Heroin and cocaine.

22 Q Let me direct your attention to November of 1971.
23 Did you at that time have occasion to have a conversation
24 with Toni about the man from Chicago?

25 A Yes, I did.

A

1 mmh 10

Brown-direct

2 MS. SOLLEDER: I object, your Honor. What happened,
3 what did they say?

4 THE COURT: Overruled. There has to be some
5 focusing. Overruled.

6 Q Tell us about that conversation.

7 A She told me that she had gotten in touch with
8 Shi -- the person Shi was doing business with in Chicago and
9 she wanted to know if she could continue to buy or, rather,
10 continue to serve this man, meaning to give him cocaine and
11 heroin through me, and I agreed, and upon agreeing, the man
12 would come into town, like I said, once or three times
13 a year, and he would purchase --

14 MS. SOLLEDER: I object to what this man from
15 Chicago was doing in the answer. I don't think it is
16 responsive to the question.

17 THE COURT: Overruled.

18 A I would give her the drugs and she would give me
19 the money.

20 Q What kind of drugs and how much?

21 A It was cocaine, it was an eighth, maybe on several
22 occasions it might have been a quarter of a ki of cocaine.

23 Q Did you ever have occasion to sell heroin to the
24 defendant Toni, Marion Dunmore?

25 A Yes, I did.

T4 am

hps

Parker - direct

3531

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q The other side of Grand Central Station?

A Yes, on Grand Central Parkway, I'm sorry.

Q What happened on the other occasion, at 96th Street, when you saw Jack Brown cutting narcotics during this period?

A He was in the bathroom cutting narcotics. He mixed narcotics in the newspaper and he told me that Shi was coming. After about half an hour or so --

Q What did he say?

A He told me that Shi was coming to get a half a kilo of cocaine. After about a half an hour or so, he came out of the bathroom and if I'm not mistaken, myself, my wife and my two kids were there in the apartment and he said, "Come on, we're going over to Jodi's," which was in the same complex but right behind the next building. You had to go downstairs to go through the court to get to Jodi's apartment.

Q Mr. Parker, let's back up. Jodi's apartment, is this 10 West 66th?

A No.

Q A different apartment?

A Yes.

Q Where was this apartment located?

A Jack's apartment was on 96th Street. It's

- 1 lps Parker - direct 3532
- 2 the same development, two different buildings, but one is
- 3 behind the other and Jodi's apartment was in the building
- 4 behind Jack's apartment or a building on 97th Street.
- 5 Q So her address was 97th Street and Jack's
- 6 address was 96th Street?
- 7 A Yes.
- 8 Q Continue to tell us what happened.
- 9 A When we got down the ground floor, and got
- 10 off after the elevator, we walked to the right, to the
- 11 corner, and you can either go left or right, out the front
- 12 door, or to the right into the courtyard between the two
- 13 buildings.
- 14 Q Who was with you at this time?
- 15 A Myself, Jackie and my two kids, and Jack.
- 16 Q Was this before or after you had seen the
- 17 cocaine being cut?
- 18 A After I seen the cocaine being cut.
- 19 Q Continue.
- 20 A We went to the right. As you go to the right
- 21 go into the courtyard on the left is the washroom. As we
- 22 were going out the door into the courtyard, Shi walked up
- 23 and Jack saw him. Jack asked us to wait for him in the
- 24 courtyard and Shi and Jack went into the laundry room.
- 25 Q Now, you used the name Shi. Had you ever

1 hps Parker - direct 3533
2 met this individual before?
3 A Yes, I had.
4 Q Is he male or female?
5 A Male.
6 Q Do you know his true name, full name?
7 A No.
8 Q Do you know him by any other name?
9 A No.
10 Q Would you take a look around the courtroom.
11 Tell the Court and jury if the man you knew as Shi back
12 in this period, April, May, '73, if this man is present
13 in court.
14 A Yes.
15 Q Would you point him out to the Court and jury?
16 A He is sitting in the first row, with the
17 printed shirt open, the first one on the bench.
18 Q Is that the row of benches to your right or to
19 your left?
20 A To my right.
21 Q Is there anything else you can describe about
22 him?
23 A You mean where he is sitting or how he looked?
24 Q How he looks?
25 A He has sort of medium built, mustache, black

24a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

hps

Parker - direct

3534

frame glasses.

MR. SEAR: May the record reflect he has identified the defendant Charles Cowper.

THE COURT: It may.

Q I interrupted you.

The defendant known as Shi was going some place?

A He went into the washroom or the laundry room.

Q Is this located in the apartment building?

A Downstairs, the main lobby.

Q Then what happened?

A After about 20 minutes Jack came out of the laundry room and we went to Jodi's apartment.

Q Was Shi with you at that time?

A Yes. We went to the right in the courtyard and Shi came straight across the courtyard to the left to go out the front door and to 97th Street.

Q Thereafter were you back in Jack Brown's apartment that day?

A I don't know.

Q Did you see the half kilo of cocaine at all after you had seen Shi this day?

A No.

Q Have you ever met a woman by the name of Toni?

1 dws Tompkins - direct 5799
2 the witness has got to square with the common understanding
3 even if she has a problem.

4 MS. CUSHMAN: Well, in order to do that, your
5 Honor, I have to be able to probe into her answer because
6 I know what she's trying to say.

7 THE COURT: And I have been allowing you to do
8 that. I just wanted to see where we were going with this.

9 (In open court.)

10 BY MS. CUSHMAN:

11 Q Just so it's clear, Mrs. Tompkins, I gather
12 that on these Tobe took the clothing which you were giving
13 Shirt, is that correct?

14 A He took the clothing that he wanted.

15 Q Had he asked for that particular clothing?

16 A If he could use a 14, 16, 14 or 10, whatever
17 was in the, among the, this goods he took what he needed.

18 Q That's a size 14 or a size 10, is that
19 correct?

20 A Different sizes.

21 Q Do you know a man named Shi?

22 A Yes.

23 Q What his full name?

24 A Charles Cowper.

25 Q When did you meet Shi, in what year and in what

dws

Tompkins - direct

76a

5900

city?

A I met Shi in New York some time in '66 or '67.

Q Was there anyone else with Shi when you met him?

A He came up to the apartment with Tobe.

Q Did there come a time when you dealt in narcotics with Shi?

A Yes.

Q When was that, what year and what month, if you remember?

A As I can remember it was in 1968.

Q What part of 1968, do you recall?

A Before the, or around the time of the Kennedy assassination.

Q Is that Robert Kennedy?

A Yes.

Q What took place on that occasion?

A I had came up to New York and had been given some money to purchase cocaine.

Q Who had given you the money?

A George Willis.

Q How much money?

A He had given me \$500 at the time.

Q What did you do in New York?

1 dws

Tompkins - direct

5801

2 A I had gone to Hotel Cecil and I contacted
3 Shi and told him that I wanted to purchase an ounce of
4 coke and I didn't have enough, George hadn't given me
5 enough and I put \$200 to it and purchased an ounce of
6 cocaine.

7 MR. RICHMAN: Your Honor, will you tell the
8 witness to keep her voice up? It trails away at the end
9 of each sentence.

10 THE COURT: Yes.

11 Mrs. Tompkins, you'll have to speak a little
12 louder.

13 THE WITNESS: All right.

14 MR. BELLER: Your Honor, perhaps I can adjust
15 the microphone.

16 Q Did you have any other transactions with Shi?

17 A Yes, I continued to have transactions with Shi
18 for a period of a year or better.

19 Q And what were you purchasing from him?
20 I take it you were purchasing, is that correct?

21 A Yes.

22 Q And what were you purchasing from him?

23 A I was purchasing heroin at that time.

24 Q How much heroin were you purchasing?

25 A I guess approximately an ounce every two to

1 three weeks from Shi.

2 Q Was it always in ounce quantities?

3 A Not always. It depend on the amount of money
4 I had.

5 Q And how would you pay him?

6 A I would pay him with clothing.

7 Q How much were you paying for the heroin that
8 you were buying?

9 A A thousand dollars.

10 Q And how much were you charging for the clothing
11 that you were paying in?

12 A One-third of the tag price.

13 Q So that would be \$3000 worth of clothing for
14 one ounce of heroin?

15 MR. RICHMAN: Your Honor, I object to the
16 Government testifying. Let the witness testify.

17 THE COURT: No, overruled. This is a
18 mathematical computation I assume.

19 Go ahead.

20 Q Is that correct?

21 A Yes, one-third of the ticket price.

22 Q Now I take it you were shoplifting in order to
23 get these clothes, is that right?

24 A Yes.

25

1 Tompkins - direct
2 dws

3 Q How often would you go out shoplifting?

4 A Every day.

5 Q And what would you do with the clothes when
6 you brought them home?

7 A I brought them home to the hotel and I would
8 leave a message to, you know, for Shi to get it. Couch with
9 me.

10 Q Would you also leave messages for anyone else
11 in connection with the clothing?

12 A I had on several occasions had called Tobe's
13 house.

14 Q What would you say when you called Tobe's
15 house?

16 A That I was you know at the hotel and had some
17 clothing.

18 Q Did you ever give clothes to Tobe?

19 A Not directly. If there was clothing in
20 the bundle that Tobe wanted he took the clothes.

21 Q And this was clothing that you were paying Shi
22 for the narcotics, is that correct?

23 MR. DILLER: Objection, your Honor, as leading.

24 A Yes.

25 THE COURT: No, overruled.

 Q How long did you continue to deal this way?

dws

Tompkins -- direct

5804

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Up until late 1969 I think.

Q Did you buy any cocaine from Shi after 1968?

A I bought some cocaine from Shi again in 1973.

Q Do you recall what part of the year of 1973?

A I think it was probably in the middle part of

'73.

Q What happened at that time? Where were you?

MR. RICHMAN: Your Honor, can we have a more
definite date than probably early '73?

MR. BELLER: Object, your Honor.

THE COURT: Sustained.

You may inquire further yourself.

Go ahead.

A The --

Q What city were you in?

A In New York.

Q And what happened?

A And when I got the cocaine back it was bad.

Q Well before that can you just tell us what took
place leading up to the transaction?

A Leading up to the transaction I had given Shi
the money for the coke in advance.

Q How much?

A Approximately 900 or something, 900, a

dvs

Tompkins -- direct

5805

thousand. I can't remember exact amount. I know it was somewhere in that neighborhood.

Q And did you receive something in return?

A I received a package that was supposed to be cocaine and I had tested it. I had snorted it and thought that it was cocaine.

And later found out after somebody else had shot it in their veins that it wasn't anything.

MR. GOTKIN: Judge, shes's mumbling.

Q So then what happened after that?

THE COURT: You want to hear that answer read?

MR. GOTKIN: No.

THE COURT: All right. Keep your voice up.

A So after that I brought it back and I went to Shi and told him that it was bad and he said that he would exchange it and at that time he did exchange it, brought back a package half the size of the previous package which I thought was cocaine at the time.

And then I met him in the bar early one morning. I was at 18th Street looking for heroin and he asked me what I was doing there and I told him I was looking for heroin. So he said that was heroin in the package that he had gave me. I went back to the hotel and used it and it was heroin.

LHP

9670

ate to do so, your client is required to respond to my inquiry as to whether he is the person with respect to whom the information is filed, and I ask him whether he affirms or denies that he has previously been convicted, as alleged in that information.

MR. RICHMAN: May I have a minute to confer with my client?

THE COURT: Please do.

(Pause.)

MR. RICHMAN: I have consulted with my client, and he advises me that he is aware of that conviction and that he had been sentenced on January 19, 1970 by Judge McLean to five years and that he served three years.

THE COURT: Mr. Cowpers, as Mr. Beller indicated, I must ask you directly:

Are you the person with respect to whom that information is filed? Are you the one about whom it speaks?

DEFENDANT COWPERS: Yes.

THE COURT: Were you convicted, as that information charges?

MR. COWPERS: I pleaded guilty.

THE COURT: You were convicted upon your plea of guilty in that case?

DEFENDANT COWPERS: Yes.

1 LHP

9671

2 THE COURT: I also instruct you that if there is
3 any challenge to that prior conviction which is not made be-
4 fore sentence is imposed, you may not thereafter raise that
5 challenge to attack the sentence. Do you understand that,
6 Mr. Cowpers?

7 MR. COWPERS: I didn't quite understand you.

8 THE COURT: If there is any challenge to that
9 conviction, the one that is mentioned in that information,
10 that you want to make and you don't make it before I impose
11 sentence on this case, then you give up the right to use
12 that challenge later to say that the sentence was not
13 properly based on that conviction.

14 MR. RICHMAN: May I consult with my client and
15 explain that to him?

16 THE COURT: Yes.

17 (Pause.)

18 DEFENDANT COWPERS: Your Honor, in my previous con-
19 viction, I don't think I was properly represented, because
20 it was over a period of time, a few years from the arrest date
21 to the conviction.

22 THE COURT: That is the challenge that you wish to
23 raise to that conviction?

24 DEFENDANT COWPERS: Yes.

25 THE COURT: You took a plea of guilty, I heard you

1 LHP

2 say.

3 DEFENDANT COWPERS: Yes, sir.

4 THE COURT: -- in which you admitted the charges
5 against you.

6 DEFENDANT COWPERS: At the time, yes, but I don't
7 think I was properly represented.

8 THE COURT: Did you ever take any appeal from that
9 conviction in any way asserting that you had had inadequate
10 representation?

11 DEFENDANT COWPERS: Yes.

12 THE COURT: In that case?

13 DEFENDANT COWPERS: In the previous case?

14 THE COURT: Yes. Did you ever make any claim in
15 any court that you had been --

16 DEFENDANT COWPERS: No; I haven't.

17 THE COURT: You did not?

18 DEFENDANT COWPERS: No.

19 THE COURT: Then I will rule that challenge out.
20 Let's go forward, Mr. Beller.

21 MR. BELLER: I have nothing to say.

22 THE COURT: Mr. Richman?

23 MR. RICHMAN: The defendant Cowpers is ready for
24 sentence, your Honor.

25 THE COURT: I am sure you want to speak on his

1 LHP

9673

2 behalf.

3 MR. RICHMAN: I would.

4 If it please the honorable Court, on April 26,
5 1976, I was assigned by this Court to represent this defend-
6 ant, Charles Powers. I have lived this case with him for
7 that entire time, and during that time, if it please the
8 honorable Court, I got to know Mr. Cowpers as perhaps one of
9 the gentlest men that I ever had the pleasure of representing.

10 When Mr. Cowpers went to jail on January 19, 1970,
11 in prison they discovered latent talents, and he became an
12 artist and painted magnificent pictures, one including
13 Muhammed Ali, which he forwarded to his friend, Mr. Brown,
14 to present to Mr. Ali; another oil painting of Mr. Ali's
15 friend, Mr. Bondini, which he also forwarded to Mr. Brown to
16 present to Mr. Bondini.

17 I have seen him five times since the verdict came
18 down, on November 12th, and each time I have been impressed
19 with his gentleness.

20 As I have said to the jury and as I have said to
21 Mr. Beller and as I said to your Honor, I don't believe this
22 man was a distributor of drugs, despite the fact that the
23 jury found him guilty. I do maintain that he was very friend-
24 ly with Mr. Brown and received drugs from Mr. Brown for his
25 own personal use.

1 LHP

2 At the time he was arrested, on April 21st, the
3 arresting officers found in his possession a minute quantity
4 of heroin and a less than minute quantity of cocaine, which
5 upon examination showed that the cocaine contained nothing
6 but sucrose and starch.

7 So it is inconceivable that a man who was the
8 supplier would have no inventory for his own personal use.

9 I am glad that Mr. Cowpers challenged that previous
10 conviction. I knew nothing about it until I inquired, and I
11 found out that at that time he was represented by Legal Aid
12 and that in the three years that this case was pending,
13 Legal Aid sent in a voucher to the Court for \$30. That is
14 something that I got out of the file, which your Honor was
15 gracious enough to issue a subpoena so that I might see it.

16 I might say that that file does not contain the
17 information, so I know no more about it now than I did then.

18 I want to say to the Court that I am about as
19 emotionally charged on this case as I have ever been in any
20 case in my life, and I might say that in the many, many
21 cases I have tried in this courtroom and many in this build-
22 ing where I have gotten acquittals, this gentleman next to
23 me is the only one who ever sent me a Christmas card.

24 So you see, those little things touch me, Judge,
25 touch me so that I can stand and look you straight in the eye

COPY RECEIVED
AUG 17 1977
ROBERT B. FISKE JR.
U.S. ATTORNEY
SO. DIST. OF N.Y.